

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19200
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On October 12, 2005, the Tax Discovery Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer) [Redacted], proposing additional use tax and interest in the amount of \$2,787. The taxpayer filed a timely protest and petition for redetermination that was received by the Tax Commission on December 14, 2005. A hearing was held on February 10, 2006.

The deficiency in this case stems from the taxpayer's purchase of a 1966 [Redacted] airplane in November of 2002. At that time the taxpayer, an officer in the United States Air Force, was stationed in [Redacted]. In October of 2004, the taxpayer was assigned to duty at [Redacted] Air Force Base in [Redacted]. In January of 2005, the taxpayer changed the FAA registration to indicate that the plane was to be registered in Idaho. The taxpayer explained that he thought he was just filing a change of address form. The FAA, however, does not maintain separate addresses for the location of the airplane and the residence of the owner. Therefore, the plane was registered in Idaho. The FAA notified the Commission of the taxpayer's change of address, and the Commission subsequently sent a standard questionnaire to the taxpayer. The taxpayer's answers to the questionnaire indicated that he had brought the plane to Idaho, but his home of record was in [Redacted]. The taxpayer would not sign an affidavit stating that the plane had been in Idaho less than 90 days in any consecutive twelve month period. The Commission then issued a notice of deficiency asserting use tax on the taxpayer's use of the plane in Idaho.

Idaho Code § 63-3621 imposes a use tax on the storage, use, or other consumption of tangible personal property in Idaho. The use tax is a complementary tax to the sales tax. Every state that imposes a sales tax also imposes a use tax. The use tax is imposed unless the purchaser paid sales tax to the seller of the property. Credit is allowed for any sales or use tax paid to another state. The taxpayer does not dispute that he used the plane in Idaho nor does he claim to have paid sales or use tax to another state.

The taxpayer argues that the Servicemembers' Civil Relief Act (SCRA) preempts states from imposing sales and use taxes on military personnel who are present in the state solely as a requirement of military service. The taxpayer relies on *Sullivan v. United States*, 395 U.S. 169, 89 S. Ct. 1648 (1969). In that case, the United States Supreme Court addressed the issue of preemption of state sales and use taxes by the SCRA (which was then known as the Sailors' and Soldiers' Civil Relief Act (SSCRA)). The case arose because the state of Connecticut had imposed, or attempted to impose, sales or use tax on several purchases of motor vehicles and boats by five different servicemen stationed in Connecticut. At the time of the decision, the relevant portion of the statute (Sec. 514) stated:

(1) For the purposes of taxation *in respect of* any person, or of *his personal property*, income, or gross income, by any State ... *such person shall not be deemed to have lost a residence or domicile in any State ... solely by reason of being absent therefrom in compliance with military or naval orders*, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State... while, and solely by reason of being, so absent. For the purpose of taxation in respect of the personal property, income, or gross income of any such person by any State... of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State ... and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State.... Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military

or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders: Provided, That nothing contained in this section shall prevent taxation by any State... in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942. (Emphasis added.)

(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

The taxpayer's reliance on *Sullivan* is misplaced. The Court held that the Sec. 514 prohibition applied only to personal property tax. The Court stated that this was clear from the use of the phrase "in respect of personal property." The following sums up the Court's decision:

We think it clear from the face of 514 that state taxation of sales to servicemen is not proscribed. A tax on the privilege of selling or buying property has long been recognized as distinct from a tax on the property itself. *And while 514 refers to taxes "in respect of" rather than "on" personal property, we think it an overly strained construction to say that taxation of the sales transaction is the same as taxation "in respect of" the personal property transferred.* Nor does it matter to the imposition of the sales tax that the property "shall not be deemed to be located or present in or to have a situs for taxation" in Connecticut. The incidence of the sales tax is not the property itself or its presence within the State. Rather it is the transfer of title for consideration, a legal act which can be accomplished without the property ever entering the State. *Had Congress intended to include sales taxes within the coverage of 514, it surely would not have employed language so poorly suited to that purpose as "taxation in respect of the personal property."* (Emphasis added.) *Sullivan* at 176.

The taxpayer stated more than once that the Court was critical of Congress in the *Sullivan* decision. It is clear from the excerpt above that the Court was only critical of the interpretation of the statute offered by the respondents. The Court also reviewed the legislative history of the SSCRA:

The absence of any reference to sales and use taxes in the history of 514 is particularly illuminative of legislative intent when considered in the light of Congress' full awareness of such state taxes and their relationship to federal interests. Sales and use taxes were prevalent by 1942, and Congress had dealt specifically with them only two years earlier. In the 1940 Buck Act, Congress provided that the States have "full jurisdiction and power to levy and collect" sales and use taxes in "any Federal area," except with respect to the sale or use of property sold by the United States or its instrumentalities through commissaries, ship's stores, and the like. If nothing else, this statute illustrates that Congress in 1942 was fully cognizant of state sales and use taxes and identified them by name when it wanted to deal with them. Moreover, it is unlikely that Congress, which had in 1940 expressly authorized sales and use taxation of servicemen everywhere on federal military reservations except post exchanges, would two years later have exempted so many of them from such taxes by means of such imprecise language as that of 514 of the Soldiers' and Sailors' Civil Relief Act. And since servicemen can apparently purchase all the necessities and many of the luxuries of life tax-free at military commissaries, *Congress may reasonably have considered the occasional sales and use taxes that servicemen might have to pay an insignificant burden, as compared with annual ad valorem property taxes, and consequently not deserving of the same exemption.* (Emphasis added.) *Sullivan* at 179.

Thus, Congress felt that since servicemembers on active duty can make tax exempt purchases from their Base Exchange, an outright ban was not necessary. The Court also noted that such a preemption put too much of an administrative burden on both state governments and retailers.

Nevertheless, the taxpayer argues that *Sullivan* did not address transfers of title that occurred prior to the start of the plaintiffs' military service in Connecticut. That is not entirely

clear from the facts presented in the case. One of the plaintiffs, [Redacted], purchased a vehicle in Florida and paid the 2% Florida sales tax. When he registered the vehicle in Connecticut, he was required to pay an additional tax because the tax rate in Connecticut was higher than in Florida. It is not clear where he was residing when he purchased the vehicle in Florida. Also, one of the plaintiffs, Commander Foster, was required to pay use tax in Texas even though he purchased the vehicle in Connecticut. *Sullivan* at 173. The Court did not indicate anywhere in its decision that the tax would not apply if the property were purchased in another state prior to moving to Connecticut. Such a holding would unduly limit the application of the use tax statute, since this is one of the situations the use tax is intended to address.

The taxpayer argued further that the revision of the SCRA in 2003 statutorily reversed *Sullivan*. The taxpayer cites “50 USC §§ 571(a) and 571(c)” in support of this contention. Apparently the taxpayer meant §§ 511(a) and 511(c) which now state:

(a) RESIDENCE OR DOMICILE- A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation *with respect to* the person, *personal property*, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders. (Emphasis added.)

(c) PERSONAL PROPERTY-

(1) RELIEF FROM PERSONAL PROPERTY TAXES- The personal property of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

A comparison between the current statute and the statute in effect in 1969 shows that the two are substantially the same. If Congress had intended to bring sales and use taxes within the ambit of the SCRA preemption, it would have said so explicitly. It is clear that Congress did not intend to do so because it did not change the phrase “with respect to” personal property. This is

the phrase that Supreme Court deemed to apply only to *ad valorem* property taxes and not to sales and use taxes.

If the taxpayer's interpretation of *Sullivan* were correct, all purchases by military personnel would be exempt from sales tax. The Commission knows of no authority to support such a broad assertion and the *Sullivan* decision states exactly the opposite.

The taxpayer also noted that the state of Alabama had inquired about the airplane at the time he purchased it. He stated that, once he explained his situation, the state agreed not to impose use tax. This is because Alabama has a rule that expressly exempts such purchases by military personnel.

810-6-2-.51.05. Members of Armed Services Stationed in Alabama Subject to Sales and Use Taxes.

(1) Members of the armed services of the United States stationed in Alabama have no immunity from sales taxes imposed upon sales of tangible personal property to them by Alabama vendors.

(2) *Property is not subject to Alabama use tax where purchased outside Alabama for use in this state by members of the armed services of the United States who are residents of another state, but who are stationed in this state, except that Alabama use tax is due on automobiles where purchased outside Alabama for use in this state where a sales or use tax on such vehicles is levied by but has not been paid to the state of residence of the purchaser. Members of the armed services stationed in states other than Alabama who purchase automotive vehicles outside of Alabama for use outside Alabama but will title and register said vehicle in Alabama will not be subject to the use tax. (Title 50, U.S. Code, Section 754(2).) (Sections 40-23-2(4) and 40-23-102) (Amended June 12, 1978, readopted through APA effective October 1, 1982) (Emphasis added.)*

No such statute or rule exists in Idaho law.

The taxpayer noted further that many Idaho retailers offer discounts to military personnel, and the Idaho Fish and Game Department offers resident fees for nonresident military personnel

stationed in Idaho. No doubt these offers are made to show appreciation for our military personnel. The Commission acknowledges the dedication of our armed forces and the sacrifices required of them. Unfortunately, the Commission's employees are not elected officials and can not create tax exemptions. That authority lies solely with the Idaho Legislature.

The one statutory exemption that would apply in this case is Idaho Code § 63-3622GG. That exemption applies to airplanes that are sold to nonresidents and are not present in Idaho for more than 90 days in any consecutive twelve month period. As noted earlier, the taxpayer would not sign an affidavit stating that the plane was not in Idaho for less than 90 days. The Commission therefore has no choice but to apply the law as it is written.

WHEREFORE, the Notice of Deficiency Determination dated December 7, 2001, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$2,640	\$193	\$2,833

Interest is calculated through March 31, 2006, and will continue to accrue at the rate set forth in Idaho Code § 63-3045.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is included with this decision.

DATED this ____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2006, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
[REDACTED]

Receipt No.